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IN THE
COURT OF APPEALS OF INDIANA

TERRY A. MERRIWEATHER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-0612-CR-561
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Pigman, Judge
Cause No. 82D02-0604-FC-284

May 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

[1] On May 1, 2007, counsel was granted permission to withdraw his appearance.

Case Summary

Terry A. Merriweather ("Merriweather") appeals his conviction for forgery, as a Class C felony.[2] We affirm.

Issue

The sole issue is whether the evidence is sufficient to sustain the forgery conviction.

Facts and Procedural History

The evidence favorable to the judgment shows that, at approximately 12:30 a.m. on April 6, 2006, Merriweather tried to purchase a phone card at the Circle K convenience store in Evansville. Johnetta McNary, a sales associate for nine years, was familiar with Merriweather, a frequent customer. Merriweather typically used coins to purchase snacks, but on this occasion, he handed McNary a $20 bill along with some $1 bills. McNary "could just tell" by the texture of the $20 bill that it was counterfeit. (Tr. 12.) She also found the color of the bill suspicious, and she observed that Merriweather "seemed nervous, fidgety." (Tr. at 22.)

McNary called Clarence Fogel, the assistant manager on duty that night, and told him the bill was counterfeit. Fogel observed that Merriweather appeared "quite nervous" and that the bill had "no hologram," was "real thin" and "kind of cottony," while genuine bills are "more slick" and "thick." (Tr. 43, 45.) The store's policy was to use a counterfeit detection pen to mark every $100 and $50 bill, as well as every suspicious $20 bill. Fogel tested the $20 bill, and the yellow mark turned dark, indicating a lack of authenticity.

When McNary told Merriweather that she could not accept the bill, Merriweather

asked, "[W]hy, am I under arrest[?]" (Tr. 22) McNary answered, "[N]o, you need to wait here. I have to call 911 . . . ." (Tr. 23.) Merriweather then "took off" out the door, leaving his $1 bills behind. Id.

Officer Tyson Bond of the Evansville Police Department investigated the incident. He found Merriweather walking in the vicinity of the convenience store. Merriweather told the officer that he had been at the store, returned to a friend's house, and was on his way back. Merriweather was arrested and the State charged him with Class C felony forgery and Class D felony attempted theft.[3] Following a bench trial, the trial court found Merriweather guilty of forgery but not guilty of attempted theft. This appeal followed.

Discussion and Decision

Merriweather contends that the evidence is insufficient to sustain his forgery conviction. Where a defendant challenges the sufficiency of the evidence to support a conviction, we neither reweigh the evidence nor judge the credibility of the witnesses, and we consider conflicting evidence in a light most favorable to the trial court's judgment. Prickett v. State, 856 N.E.2d 1203, 1206 (Ind. 2006). The factfinder is responsible for determining whether the evidence in a given case is sufficient to satisfy each element of an offense. Id. We affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Here, the charging information alleges that Merriweather with "intent to defraud did

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[2] Ind. Code § 35-43-5-2(b)(4).

[3] Ind. Code § 35-43-4-2(a); Ind. Code § 35-41-5-1.

make or utter a written instrument, to-wit: a counterfeit $20.00 bill, in such a manner that it purports to have been made by authority of one who did not give said authority, to wit: the United States government . . . ." App. at 10; Ind. Code § 35-43-5-2(b)(4).[4]

Merriweather first claims that the State did not prove that the $20 bill was in fact counterfeit. In support of that claim, he directs us to People v. Duchowney, 563 N.Y.S.2d 524, 166 A.D.2d 769 (N.Y. App. Div. 1990). There, a police officer, who had experience and training in counterfeiting, opined that the $20 bill at issue was counterfeit. On appeal, Duchowney argued that the officer's testimony invaded the province of the jury. In rejecting that argument, the New York court stated, "[I]dentification of counterfeit currency involves a subject matter which is beyond the ordinary knowledge and experience of the average juror." Id. at 525, 166 A.D.2d at 771.

Merriweather seizes upon this language and claims that, in this case, expert testimony, preferably from the United States Department of Treasury, was necessary to establish the nature of the $20 bill. We agree that specialized knowledge may assist the trier of fact in cases where counterfeiting techniques are sophisticated. Nevertheless, we do not believe that the Duchowney court meant to restrict the type of expertise required to establish authenticity. Indeed, the witness in that case was not formally qualified as an expert. Likewise, we are not persuaded that only a formally qualified expert in counterfeiting was capable of

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[4] "Make" means "to draw, prepare, complete, counterfeit, copy, or otherwise reproduce, or alter any written instrument in whole or in part." Ind. Code § 35-43-5-1(m); Stroup v. State, 810 N.E.2d 355, 360 n.4 (Ind. Ct. App. 2004). "Utter" means "to issue, authenticate, transfer, publish, deliver, sell, transmit, present, or use." Ind. Code § 35-41-1-27; Stroup, 810 N.E.2d at 360 n.4. The Indiana Supreme Court has determined that "to make" and "to utter" are "two distinct and independent" forgery offenses. Stroup, 810 N.E.2d at 360 (citing Jordan v. State, 502 N.E.2d 910, 914 (Ind. 1987)). Here, the information charges the offenses in the alternative, but Merriweather makes no claim of error in that regard.

determining whether the $20 bill at issue was genuine.

Merriweather also challenges the scientific reliability of the counterfeit detection pen. Without objection, Fogel testified that the pen leaves a gold or yellow tone, and the mark on a genuine bill will stay that color but, on a counterfeit bill, the color will turn black. Merriweather suggests that the instrument may be "sufficiently reliable to be admissible" but not "sufficiently reliable upon which to support a conviction." Appellant's Br. at 9.

We observe, however, that the counterfeit detection pen was but one piece of evidence showing that the $20 bill was counterfeit. For example, McNary immediately noticed that the bill was not of the same texture and color as genuine bills. She had worked as a clerk for nine years; she handled approximately fifty to sixty $20 bills during a regular eight-hour shift; and she worked five to six days per week. Thus, McNary's perception was based upon extensive experience. Fogel also testified regarding his observations of irregularities in the $20 bill. It was the task of the trier of fact to assign weight to all of this evidence. See, e.g., U.S. v. Codjo, 195 F.3d 420 (8th Cir. 1999) (affirming conviction for counterfeiting where evidence included results of counterfeit detection pen test).

Merriweather next insists that, even if the evidence shows the bill is counterfeit, in light of his own "uncontroverted testimony," the State did not prove he knew the bill was counterfeit and, thus, that he intended to defraud. Appellant's Br. at 7, 11. Intent to defraud may be proven by circumstantial evidence and will often include the general conduct of the defendant when presenting the instrument for acceptance. Miller v. State, 693 N.E.2d 602, 604 (Ind. Ct. App. 1998).

First, we disagree with Merriweather's characterization of his testimony as

"uncontroverted." Twice, he denied that the counterfeit $20 bill was the bill he had presented to McNary. He also testified that he received the $20 bill from another store but then admitted that he did not know from where it came. His explanation regarding the source of the bill was not beyond dispute.

Other witnesses testified as to Merriweather's "nervous" and "fidgety" demeanor during and after the transaction. When McNary told him she could not accept the bill, Merriweather asked if he would be arrested. McNary replied in the negative but stated she was going to call 911. Merriweather then left the scene without taking his other money. Merriweather's conduct during and after the transaction could have led a reasonable trier of fact to conclude that he knew the $20 bill was counterfeit. Cf. U.S. v. Leftenant, 341 F.3d 338, 347 (4th Cir. 2003) (reasoning that the shocked look on defendant's face when a counterfeit bill fell from his pocket indicated that he realized he had been caught with counterfeit currency and that he intended to use it to defraud), cert. denied, 540 U.S. 1166 (2004). On this record, the trial court could reasonably have found intent to defraud. We conclude that the State presented sufficient evidence to sustain Merriweather's forgery conviction.

Affirmed.

SHARPNACK, J., and MAY, J., concur.